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GANNAWAY, ADM'R, v. TATE. *

Supreme Court of Appeals: At Richmond.

December 6, 1900.

1. TRUST DEED—*Live stock—Increase.* The increase of live stock conveyed by a deed of trust passes under the deed, though not specifically mentioned therein.

Petition for a writ of error to a judgment of the Circuit Court of Pulaski county. *Refused.*

W. S. Poage, for the petitioner.

BY THE COURT.

A deed of trust executed March 6, 1899, conveyed, *inter alia*, a lot of ewes, to secure a debt of the grantors. It made no mention of the increase of the ewes. The lambs weaned in the following winter were sold, and the price thereof garnisheed, in the hands of the purchaser, by an execution creditor of one of the grantors. The only question presented was whether the trust creditor or the execution creditor was entitled to the fund.

The Circuit Court held that the increase of the ewes was subject to the trust deed, and adjudged the fund to the trustees. From that judgment the execution creditor applied for a writ of error, which is refused.

The question of the right of a purchaser who had paid for the increase was not involved. *Writ of error refused.*

NOTE.—That a mortgage of domestic animals covers their increase, though not expressly mentioned, is well settled—the maxim being *partus sequitur ventrem*. *Arkansas, etc. Cattle Co. v. Mann*, 130 U. S. 69; *Northwestern Nat. Bank v. Freeman*, 171 U. S. 620; *Kellogg v. Lovely*, 46 Mich. 131, 41 Am. Rep. 151.

In *Funk v. Paul*, 64 Wis. 35, 54 Am. Rep. 513, it was held that while this is true as between the mortgagor and mortgagee, and even as between the mortgagee and a subsequent *bona fide* purchaser so long as the young is following the mother for nurture, yet after weaning, the lien of the mortgage will cease as to a *bona fide* purchaser, where there is nothing on the face of the mortgage to indicate that it was intended to cover the increase. The distinction seems sound, since after the young has ceased to follow the mother, *bona fide* purchasers cannot be expected to identify it as the increase of the mortgaged mother. In other words, as to purchasers without actual notice, the description in the mortgage is insufficient to cover the increase after weaning, and the record of the mortgage is not constructive notice in such case. The same view is held in *Winter v. Landphere*, 42 Iowa, 471; *Thorpe v. Cowles*, 55 Iowa, 408; and *Darling v. Wilson*, 60 N. H. 59, 49 Am. Rep. 305.

* Reported by M. P. Burks, State Reporter.